

Order

Michigan Supreme Court
Lansing, Michigan

September 26, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-41

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed New Rule 19
of the Rules Concerning
the State Bar of Michigan

On order of the Court, this is to advise that the Court is considering proposed new Rule 19 of the Rules Concerning the State Bar of Michigan. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website, www.courts.mi.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The language that follows is new.].

Rule 19 Confidentiality of State Bar Records

Records maintained by the state bar pertaining to certain programs are confidential in nature and not subject to disclosure, discovery, or production unless the state bar is ordered to produce the record by a court after notice and a hearing. The programs to which this confidentiality rule applies include:

1. Ethics Committee and Ethics Hotline programs
2. Practice Management Resource Center program
3. Unauthorized Practice of Law program
4. Client Protection Fund program

5. Lawyers and Judges Assistance program.

Disclosure and production may be made in response to a lawfully issued subpoena from a law enforcement agency in connection with a criminal investigation, proceeding, or trial, or voluntarily by the State Bar of Michigan to a governmental agency that requests the assistance of the State Bar of Michigan in conducting an investigation pertaining to an Unauthorized Practice of Law complaint or a Client Protection Fund claim.

“Records” includes letters, memoranda, draft opinions, notes, applications, medical records, psychological and counseling records, and any other document maintained in whatever form that is not otherwise made public by the state bar in conducting its business.

Except as Michigan Rule of Professional Conduct 8.3(c)(2) provides, this rule does not abrogate an attorney’s independent obligation under Michigan Rule of Professional Conduct 8.3(a) to report a significant violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer.

Staff Comment: The proposed new rule codifies the practice of the State Bar of Michigan with regard to confidentiality of records maintained relating to various state bar programs.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. All comments will be posted on the Court’s website. When filing a comment, please refer to ADM File No. 2005-41.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 26, 2006

Corbin R. Davis

Clerk